

INDIANA'S NEW ANTI-SMOKING LAW

Insights
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On March 19, 2012, Indiana Gov. Mitch Daniels signed anti-smoking legislation into law. It will take effect July 1, 2012, and while compliance should not be onerous, violations could be expensive for companies, individual managers and others.

With certain exceptions, the law prohibits smoking in "places of employment," "public places" and areas within eight feet of an entrance to such a place. "Places of employment" essentially include all enclosed areas where people are employed, but excludes private vehicles. A "public place" is "an enclosed area of a structure in which the public is invited or permitted." Numerous establishments are conditionally excepted from coverage, such as bars, riverboats, casinos and certain fraternal clubs, but the law will apply to most Indiana employers.

What's Required

Covered employers must inform each of their current and prospective employees of the smoking prohibition. For current employees, an employer might consider posting a notice on bulletin boards, making an announcement at a plant meeting, or sending a company-wide email or letter to employees. The employee handbook also could be updated to include an appropriate notice. Employment applications should be revised to include an appropriate notice to prospective employees, or a separate notice should be given to applicants.

The law requires an "owner, operator, manager, or official in charge of a public place or place of employment" to remove ashtrays and other smoking paraphernalia from areas where smoking is prohibited. Such persons also must post conspicuous signs at each public entrance to a "no-smoking area." The signs must read, "State Law Prohibits Smoking Within 8 Feet of this Entrance" or you may use other, similar, language. Outdoor smoking areas are not prohibited, provided they are more than eight feet from a public entrance and are not themselves "enclosed."

If someone smokes in a prohibited area, an "owner, operator, manager, or official in charge of" that area must ask the person to refrain from smoking. If the person fails to comply, he or she must be asked to leave and, if necessary, compelled to leave (by lawful means, of course, such as summoning the police).

The new law also prohibits discrimination and retaliation for reporting a violation of, or exercising any right or satisfying any obligation under, the law. It does not, however, explain precisely what recourse or remedy is available to an aggrieved party.

Because several provisions of the new law require certain actions be taken (or refrained from) not just by "employers," but also by "owners," "managers," "operators" and "officials," it would be prudent to notify all supervisors and higher level employees of their new responsibilities. Optimally, notice should be given in writing, with acknowledgement of receipt.

Enforcement

Indiana's Alcohol & Tobacco Commission is primarily charged with enforcing the law, but the State Health Department, local health departments, law enforcement officers, and others also may enforce it. The responsible agencies may inspect covered premises for compliance. Failure to comply with the new law can be expensive. The first three infractions may result in fines of up to \$1,000 each. Each additional violation may result in a fine of up to \$10,000.

Many employers already have policies similar in effect to the new law. Consequently, the new law should not impose a great burden on most employers. For more information, or to discuss how this law might affect your business, contact an attorney in the Louisville office of Fisher Phillips at (502)561-3990.

This Legal Alert provides an overview of a specific new state law. It is not intended, and cannot be construed, as legal advice for any particular fact situation.